

USSN 10/677,214

GTI-1110-CT

REMARKS

Claims 1-24, 27-28 and 30-41 are currently pending. Herein Applicants affirm their earlier election of claims 1-6, 10, 11, 13-19, 27, 28, 30-33, and 35-41, including the species election referred to in the Office action, and cancel non-elected claims 7-9, 12, 20-24, and 34, further to the teleconference Applicants' undersigned attorney had with the Examiner on 3 November 2005. Additionally, Applicants have amended each of the pending claims to correct certain typographical errors, ensure consistency, to use currently preferred terminology, and to change the dependency of claim 30. Claim 1 has also been amended such that it is now directed to certain currently preferred embodiments of the invention, namely those wherein the photosensitive agent is delivered as part of a pharmaceutical composition that further comprises a pharmaceutically acceptable carrier but which does not include liposomes. This, and the other claim amendments, are fully supported by the specification and claims as originally filed, and none of them adds new matter or is being made for a reason related to patentability. Instead, Applicants merely wish to focus this application on certain commercially relevant embodiments of their over-arching invention, which focusing has the added benefit of obviating the 35 U.S.C. § 102(e) and § 103(a) rejections premised on U.S. patent no. 6,041,252 (the '252 patent), as discussed below. In any event, Applicants reserve the right to pursue the inventive subject matter no longer or not yet claimed herein in this or a related application.

As the Office action also requires Applicants to elect either extracorporeal or internal light application as a sub-species of their claimed invention, they herein elect internal light application. Applicants agree that claim 1 is generic, and given the elections herein, they submit that claims 1-6, 10, 11, 13-18, 27, 28, 30-33, and 35-41 are readable on these elected species and sub-species. Upon a determination that the elected species and sub-species are patentable, Applicants expect that non-elected subject matter will be rejoined and also be held to be patentable.

Applicants respectfully request reconsideration of the invention as now claimed in view of the following remarks.

The pending claims stand rejected under 35 U.S.C. § 102(e) and § 103(a) as being

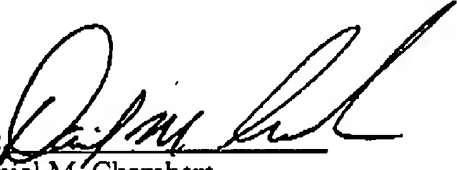
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allegedly anticipated by or obvious in view of the '252 patent. Applicants respectfully traverse these rejections for the simple reason that the '252 patent only concerns a liposome-based drug delivery method that relies on electric fields to disrupt liposome membranes to release encapsulated therapeutic molecules. In contrast, Applicants' invention relates to the use of electroporation to facilitate entry of molecules into cells, not the release of molecules from liposomes. For this reason Applicants submit that their invention, even before entry of the amendments to claim 1 herein, patentably differs from the disclosure of the '252 patent. With regard to claim 1 as amended, this distinction is even greater, as the '252 patent arguably teaches away from methods that do not use liposomes. Given these distinctions, the 35 U.S.C. § 102(e) and § 103(a) rejections should be withdrawn, and the claims, as amended herein, allowed. Of course, if any issue remains outstanding that may be addressed without the need for an additional formal action and response thereto, the Examiner is encouraged to telephone the undersigned in order to resolve such issue(s). Otherwise, Applicants would appreciate prompt issuance of a notice to allowability.

Respectfully submitted,

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